

# **EXHIBIT**

## **#21**

1 UNITED STATES BANKRUPTCY COURT  
2 Case NO. 07-15195 (MS)

ORIGINAL

3 IN RE: BAYONNE MEDICAL CENTER:

4 ALLEN D. WILEN,

5 Plaintiff,

6 v.

7 BAYONNE/OMNI DEVELOPMENT  
8 LLC, et al,

9 Defendants.

DEPOSITION OF:

ADOLPH WALTER

10 TRANSCRIPT of testimony as taken by and  
11 before MELISSA A. HILDEMAN, a Certified Shorthand  
12 Reporter Realtime and Notary Public of the State of  
13 New Jersey, at the offices of GRUEN & GOLDSTEIN,  
14 1150 West Chestnut Street, Union, New Jersey 07083,  
15 on Monday, March 1, 2010, commencing at 10:04 in the  
16 morning.

1 Q. Brockman?

2 A. Herman Brockman.

3 Q. And the details, meaning what  
4 they had in mind.

5 A. Pretty well this. Yes. I don't  
6 know if it's in the appraisal there. Is there a  
7 letter? Here. I asked -- that's where the  
8 confusion came in. They asked me how much would  
9 this be about.

10 Q. How much would you charge?

11 A. How much I would charge? And  
12 from him talking about putting up a new building  
13 on the land that was vacant, and I asked him, You  
14 have construction plans and so on; and he was  
15 unsure, but I gave a quote on doing a -- also a  
16 construction, new construction there.

17 Q. On doing what about new  
18 construction?

19 A. A nursing home they wanted to  
20 build.

21 Q. But what was the proposal about,  
22 this alternate proposal or additional proposal  
23 that you made?

24 A. That I made?

25 Q. Yeah.

1 A. I was only interested in what I  
2 would -- they were interested in how much I would  
3 be charging for an appraisal.

4 Q. Okay.

5 A. It was a lot more than what it  
6 wound up. And that's what that letter here -- I  
7 asked Apsel to send me some kind of a thing  
8 because after that meeting, they were all over the  
9 place. They weren't specific like people that are  
10 -- they were layman. So I was confused as to  
11 actually what did they want me to do. Did they  
12 want me to do an appraisal on what it would cost  
13 for putting up a new -- a new building. Then I  
14 quoted it. It was a lot more, maybe \$7,500, in  
15 that range, I usually would charge for something  
16 like that. So I called them up -- Marvin, I  
17 called up -- I don't know if it was the same day  
18 or next day -- to get a clarification. I asked  
19 him to make up something, a list, and this is what  
20 he made up and sent me.

21 Q. Okay.

22 A. And in here --

23 MR. GRUEN: We can mark this now.

24 (Exhibit Walter-4, Multiuse Medical  
25 Arts Building, marked for identification.)

1 Q. So you say a couple days later  
2 after that first meeting with Hausmann, Apsel and  
3 Brockman, they sent you this document, Defendant  
4 Walter-4, as you understood it, to further clarify  
5 what they had in mind.

6 A. I needed a clarification as to  
7 what they expected me to do. Actually, that's  
8 what it comes down to.

9 Q. Okay. So you got this document  
10 in response to your request to them for  
11 clarification of what they wanted you to do.

12 MR. FALANGA: Object to the form.

13 Q. Is that correct?

14 A. I believe -- I believe that's  
15 what he made up here, explaining everything here,  
16 but it still had the nursing home in here. He's  
17 talking about nursing -- all I did was then went  
18 down, they were interested in a price, too, to  
19 keep the price down. So --

20 Q. Price, meaning your fee?

21 A. My fee. They settled on that I  
22 do as is --

23 Q. Appraisal.

24 A. -- appraisal, which is vacant  
25 land and the building, two buildings on there.

1 They call it the phone building. And then there  
2 was a building next to it, attached to it, but  
3 separate, that was formerly a glass, auto glass,  
4 but it was vacant.

5 Q. That's the warehouse building.

6 MR. FALANGA: Object to form.

7 Q. Was that warehouse building  
8 one-story?

9 A. That's a one -- no, that's not  
10 the one -- actually, the warehousing was in the  
11 phone building. They had storage in there, and  
12 they had the supplying utility, oil burners,  
13 furnaces, small offices, but mostly a lot of  
14 storage, a lot of wasted space that wasn't being  
15 used, so to speak --

16 Q. Uh-huh.

17 A. -- but could be used for offices  
18 when I was going through it.

19 Q. So after you received Defendant  
20 Walter-4, is this correct, you then --

21 A. I called them up and talked to  
22 him on the phone. I says, Listen, you know, this  
23 here is -- is -- I still don't know. I says, I  
24 think what you need -- I told them what I thought  
25 would be good because he didn't have plans

1 available --

2 MR. FALANGA: Can I see?

3 THE WITNESS: Yes.

4 A. There was no plans available as  
5 far as the new construction they were going to put  
6 on there.

7 So I said, Why don't I do the -- do  
8 it as vacant land as is, what you have there now.  
9 Get a value on that. And when you get the plans,  
10 or the contractors, or whoever, you know, get it  
11 together and at least you know what the land is  
12 and what you have there.

13 MR. FALANGA: What was marked is  
14 Walter-2. I apologize. I was confused here.

15 THE COURT REPORTER: It was 2 -- so  
16 1 was the subpoena, 2 is the report, 3 is the  
17 September 16th letter and 4 is the whatever is  
18 there.

19 MR. FALANGA: That's it. Thank  
20 you.

21 THE WITNESS: Am I confusing or  
22 what?

23 MR. GRUEN: No, no. It's fine.

24

25 EXAMINATION BY MR. GRUEN:

1 Q. When you made the suggestion,  
2 what was the response, if any?

3 A. Well, they asked how much. And I  
4 quoted, I think it was 40 -- \$4,800 for it. And I  
5 came at -- the price I came to is because usually  
6 in Bayonne or Jersey City, Hudson County, if it  
7 was, like, a mixed-use, with a store on the bottom  
8 and maybe three/four commercial units --  
9 apartments above, I would charge about 2,000. So  
10 I figured two floors...

11 Q. Any further discussions about the  
12 scope of your assignment in that next call?

13 MR. FALANGA: Object to the form.

14 A. My what?

15 Q. The scope of your assignment.  
16 What it is that you were going to be doing.  
17 Anything else that you discussed about what you  
18 were going to be doing, as opposed to your fee, in  
19 the next call?

20 A. I put it -- I think I have it in  
21 my -- about a fee?

22 Q. No. Other than the fee. The  
23 assignment, what you were going to be doing. Any  
24 further discussion about --

25 A. I told them I was going to do it



1 as is.

2 Q. Let me -- let take you to --

3 A. You might want that. I have a  
4 copy.

5 Q. I'm going to come back to it.

6 MR. FALANGA: We're going to need  
7 to keep the original exhibits here.

8 THE WITNESS: Oh, I'm sorry.

9 MR. FALANGA: That's okay. Just  
10 until the conclusion of the deposition.

11 THE WITNESS: I have it here. Just  
12 stamp it Copy, so I don't get them mixed up.

13

14 EXAMINATION BY MR. GRUEN:

15 Let me show you on your appraisal  
16 report, Walter-2. The pages are not numbered, but  
17 it's the first series of photographs. The one on  
18 the top is called, "Subject, front view," and the  
19 one on the bottom is called "Subject, front view."

20 A. Yes.

21 Q. I referred earlier in my  
22 questioning to a one-story warehouse. Does the  
23 photograph on the bottom reflect what you saw at  
24 the site?

25 A. The bottom one does, yes.

1 Q. Okay. Is that -- would it be  
2 fair to describe that as a one-story warehouse?

3 MR. FALANGA: Object to the form.

4 A. It was vacant, and I don't know  
5 if they were using it as a warehouse. It had an  
6 overhead door. I think they were using storage  
7 space. If it was locked, I couldn't get in, so  
8 this is from memory. I looked in through the  
9 glass.

10 Q. Now, did you have any further  
11 conversations with either Brockman, Hausmann or  
12 Apsel beyond the one that you just described and  
13 before you undertook the appraisal?

14 A. Just say that again.

15 Q. Any further conversations with  
16 any of these gentlemen from Bayonne Medical Center  
17 before you went out and did the appraisal?

18 A. Before I went out, no.

19 Q. Did they ever tell you that they  
20 were proposing to sell the property?

21 A. No, they wanted to put a  
22 construction -- a nursing home on it.

23 Q. Okay. So they did not tell you  
24 that they were interested in selling the property?

25 MR. FALANGA: Object to the form.

1 A. No. I don't think they knew  
2 themselves what they wanted to do...

3 MR. FALANGA: It's all on the  
4 record, so you know.

5 THE WITNESS: It's --

6 MR. FALANGA: I understand.

7 THE WITNESS: I was very confused  
8 with them. They were amateurs, so to speak.

9 Q. How were they amateurs?

10 A. Amateurs?

11 Q. Yeah.

12 A. They were all over the place. I  
13 couldn't -- that's why I had to call up and find  
14 out what exactly do you want, you know, as far as  
15 the appraisal is concerned.

16 Q. But ultimately then, if I  
17 understand you correctly, after the clarification,  
18 you determined that the facts set forth in  
19 Defendant Walter-4 would not be the basis for your  
20 appraisal report; is that correct?

21 MR. FALANGA: Object to the form.

22 Q. You can answer. So you ignored  
23 for purposes of the appraisal what's set forth in  
24 that document, correct?

25 A. Well, yeah. I got clarification

1 on it.

2 Q. But the facts set forth in that  
3 document were not used by you in connection with  
4 the generation of the appraisal report.

5 A. No, no.

6 MR. FALANGA: Objection to the  
7 form.

8 Q. Now, there's a series of  
9 handwritten notes that I'm taking out of the file  
10 that you produced a moment ago in response to the  
11 Document Demand No. 1. They are on lined, white  
12 sheets. These are the documents that you  
13 mentioned that you put the red pen on. And I'm  
14 going to have these marked as one exhibit.

15 (Exhibit Walter-5, Handwritten  
16 Notes, marked for identification.)

17 Q. Last sheet, on the next-to-last  
18 sheet there is a diagram. Are these the buildings  
19 that comprise the subject of your appraisal?

20 A. Yes. This is --

21 MR. FALANGA: Object to the form.

22 A. This is a -- the thing you just  
23 pointed out before.

24 Q. Referring to the building on the  
25 left side?

1 the neighborhood from -- that were very similar  
2 sized properties and so -- land, frontage in the  
3 central business district.

4 Q. So the answer to my question  
5 would be, that the source for the commercial  
6 rental shown on Page 48 of your report was your  
7 own files?

8 A. From my own files.

9 MR. FALANGA: Objection to form.

10 Q. Okay. And did your own files  
11 contain copies of the leases for these commercial  
12 rental properties?

13 A. If there were leases, yes.

14 Q. Do you know for a fact that your  
15 file contained copies of the leases for these  
16 properties?

17 A. I always ask for them.

18 Q. Do you know for a fact that your  
19 files contained --

20 A. No, the fact -- I don't know  
21 that.

22 Q. Do you know what the dates -- if  
23 there were leases, do you know what the date of  
24 the lease was for 738 Broadway?

25 A. No.

1 Q. Is there anything in the file  
2 that you brought today that would reflect that you  
3 referred to or considered a lease for 738 Broadway  
4 when rendering the numbers on Page 48?

5 A. No.

6 Q. Is there anything that shows that  
7 you referred to a lease for 1050 Broadway, when  
8 rendering the numbers on Page 48 for that property  
9 --

10 A. No.

11 Q. -- and the same for 360 Broadway?  
12 MR. FALANGA: Object to form.

13 Q. And the same for 360 Broadway?

14 A. Yes, no.

15 MR. FALANGA: Objection.

16 Q. Excuse me. Yes, meaning there is  
17 nothing that indicates that you referred for  
18 leases --

19 MR. FALANGA: Objection to form.

20 Q. -- is that correct?

21 A. I don't -- no, I don't have it.

22 Q. Okay. Do you have anything in  
23 your file at all, in the appraisal file, that  
24 shows that you, in fact, referred to leases when  
25 rendering the numbers on Page 48 for any of these

1 three properties?

2 MR. FALANGA: Object to the form.

3 A. No.

4 Q. Okay. Do you have a recollection  
5 for a fact, you're under oath, that you refer to  
6 the actual leases when rendering the numbers on  
7 Page 48?

8 MR. FALANGA: Object to the form.

9 A. I don't know -- when I --

10 Q. Sir, that's a yes-or-no answer.

11 A. No. No.

12 Q. Do you know for 738 Broadway,  
13 what the date of the lease was, if it was under a  
14 lease?

15 A. I don't know that.

16 Q. Do you know what the terms of the  
17 lease were, if it was under lease?

18 A. No. Not --

19 Q. So you --

20 A. Not now.

21 Q. Do you know whether it was gross  
22 or net?

23 A. Not for sure.

24 Q. Okay. Do you know if it was for  
25 an office building or some other type of use?

1 A. Let me just do something here.

2 Let me just see. Where is the --

3 THE WITNESS: I shouldn't talk.

4 The pictures and the details -- Explanation of  
5 adjustment. Let me go through here.

6 Q. There are no adjustments under  
7 the Income and Expenses Functions; isn't that  
8 correct?

9 A. That's correct. But let me just  
10 see here, they may be in my files.

11 Q. Are there files of yours that you  
12 did not bring with you today in response to the  
13 subpoena? Sir?

14 A. I'm thinking. It takes me a  
15 little while, please. In five years, I have  
16 depreciated 30 percent, also.

17 Q. Is that functional, external, or  
18 --

19 A. It's getting to be everything.

20 Q. Functional, external and  
21 obsolescence. That's the word.

22 A. The little hair helps.

23 Q. So, again, my question was, is  
24 there any part of your file that you did not  
25 produce today in response to the subpoena?



1 A. As standing, the -- the  
2 improvements to the land and the improvements, the  
3 building.

4 Q. Yes.

5 A. Standing there now, if it's --  
6 anything happens to it in the meantime, separate  
7 valuation of the land and the -- and the building.

8 Q. By "something happens to it,"  
9 what do you mean?

10 A. Burns down.

11 Q. So if the building --

12 A. Or is demolished.

13 Q. For instance, if the building  
14 were demolished or not there -- are you saying if  
15 the building were demolished or not there, that  
16 this appraisal report would not be reliable?

17 A. Well --

18 MR. FALANGA: Object to the form.

19 A. No, I don't -- utilization, for  
20 use, it wouldn't be used.

21 Q. So it would no longer be under  
22 the existing program of utilization if the  
23 building were to be removed, and, therefore, this  
24 appraisal report would not be reliable; is that  
25 what you're saying?

1 MR. FALANGA: Object to form.

2 A. No, it may change the whole  
3 thing.

4 Q. The whole picture.

5 MR. FALANGA: Object to the form.

6 A. Yeah.

7 Q. And the picture means the whole  
8 valuation process, right?

9 MR. FALANGA: Object to the form.

10 A. No. That's not what I'm saying.

11 Q. Okay. What are you saying then?

12 A. I'm saying that the value may be  
13 different --

14 Q. Uh-huh. So value is the same as  
15 valuation --

16 A. -- utilization, the use of it.

17 THE COURT REPORTER: One at a time,  
18 guys.

19 THE WITNESS: I'm sorry.

20 Q. So, if the building were removed,  
21 that would change the valuation process and result  
22 in a different valuation?

23 MR. FALANGA: Object to the form.

24 A. I appraised this as is.

25 Q. Okay. And therefore, if the

1 building were demolished or removed, it would  
2 result in a different valuation?

3 MR. FALANGA: Object to form.

4 A. I don't know. That's speculation  
5 on my part.

6 Q. Well, it's speculation on your  
7 part. And yet, didn't your report in part rely  
8 upon the reproduction costs of the building?

9 MR. FALANGA: Object to the form.

10 A. No. I went out and --

11 Q. Didn't you do a cost analysis?

12 A. Huh?

13 Q. Didn't you do a cost analysis?

14 A. Yes, I have that here. We didn't

15 --

16 Q. Okay. And wasn't that a cost  
17 analysis of the reproduction cost to reproduce the  
18 existing building?

19 A. Yes.

20 MR. FALANGA: Object to the form.

21 Q. If the existing building were  
22 demolished, would that impact your valuation?

23 MR. FALANGA: Object to the form.

24 A. I wasn't asked for that. I was  
25 ask to do an appraisal as is --

1 Q. If you had been -- if you had  
2 been told --

3 A. -- of the existing properties.

4 Q. If you had been told that the  
5 existing building was going to be demolished,  
6 would that affect your valuation?

7 A. If I were told it would be? I  
8 don't know if I would do the appraisal.

9 Q. Because?

10 A. Because it's not my -- my field.

11 Q. And when you say it's not your  
12 field, you wouldn't be --

13 A. It's not my expertise.

14 Q. You wouldn't be qualified then,  
15 as an expert, to deliver an valuation report if  
16 the building were going to be demolished; is that  
17 what you're saying?

18 MR. FALANGA: Object to form.

19 A. I would have never done an  
20 appraisal report like that.

21 Q. Okay.

22 Let's continue under the heading  
23 Important Definitions. The definition of market  
24 value, I'm going to read it into the record.

25 "The most probable price which a

1 property should bring in in a competitive and open  
2 market, under all conditions requisite to a fair  
3 sale, the buyer and seller each acting prudently  
4 and knowledgeably, and assuming the price is not  
5 affected by undue stimulus. Implicit in this  
6 definition, is the consummation of a sale as of a  
7 specified date and passing of title from seller to  
8 buyer under conditions." Then you list five  
9 conditions. I'm not going to ask you about the  
10 conditions.

11 If both the buyer and the seller  
12 knew at the time of the sale that the improvement  
13 was going to be torn down, would the valuation --  
14 should the valuation not reflect that?

15 MR. FALANGA: Object to form.

16 A. I did it as is.

17 Q. Okay. But within your  
18 definition, the buyer and seller, each acting  
19 prudently and knowledgeably, if each of the buyer  
20 and the seller knew at the time of the sale that  
21 the building was going to be torn down, would that  
22 affect valuation?

23 MR. FALANGA: Object to the form.

24 A. I was not aware of a buyer.

25 Q. I'm not criticizing you. I'm

1 saying, if the buyer and the seller knew at the  
2 time of the sale that the building was going to be  
3 torn down, would that affect valuation?

4 MR. FALANGA: Object to the form.

5 A. I'd say it's a good question, and  
6 I don't think I could answer it because -- no, I  
7 can't answer that question. It's an opinion.

8 Q. If both the buyer and the seller  
9 knew at the time of the sale that the building was  
10 going to be torn down, shouldn't the valuation be  
11 based upon land value less demolition expenses?

12 MR. FALANGA: Object to the form.

13 A. I didn't consider that. I wasn't  
14 informed that of a buyer or seller.

15 Q. But I'm saying if the buyer and  
16 the seller knew it was going to be torn down,  
17 wouldn't that be the appropriate approach to the  
18 valuation.

19 A. That's beyond my expertise. I  
20 would have look to the details.

21 THE COURT REPORTER: I -- would  
22 have to --

23 Q. THE WITNESS: Oh, I'm sorry.

24 THE COURT REPORTER: I didn't hear  
25 -- you have to give the rest of you answer. "That's

1 Q. Look at Page 53 of your report.

2 A. Page 53?

3 Q. Yeah. I'm going to read the last  
4 two paragraphs.

5 "The Cost approach begins with an  
6 estimation of land value and estimate of  
7 reproduction or replacement costs new.  
8 Depreciation from all causes is then estimated and  
9 subtracted from the estimate of reproduction or  
10 replacement cost new. The cost approach provides  
11 a reliable indication of value when the appraised  
12 improvements are new or are relatively new."  
13 Would you agree with that so far? Yes?

14 A. Yes.

15 Q. "And do not suffer items of  
16 functional or external obsolescence. When this is  
17 not the case, the value indicated by this approach  
18 becomes less reliable."

19 So is that what you mean when you  
20 say that an 80-year-old building is not typically  
21 the subject of a cost approach, because of the  
22 functional or external obsolescence that has to be  
23 factored into the conclusion?

24 MR. FALANGA: Object to the form.

25 A. I'm say -- I'm saying what I have

1 written here, and I don't know what...

2 Q. Is the problem with the cost  
3 approach with an 80-year-old building that the --

4 A. Where does 80-year-old building  
5 come in here?

6 Q. Is there a problem using the cost  
7 approach for an 80-year-old building --

8 MR. FALANGA: Object to the form of  
9 the question.

10 A. I don't know --

11 Q. Is the cost approach reliable  
12 when using an 80-year-old building, given the  
13 functional and external and physical depreciation?

14 THE COURT REPORTER: Hold on.

15 MR. FALANGA: Object to the form of  
16 the question. Sorry.

17 A. Hold on a minute, I got to --

18 Q. We're going to go back. "The  
19 cost approach" -- I'm, again, reading from Page  
20 53. "The cost approach provides a reliable  
21 indication of value when the appraised  
22 improvements are new or are relatively new." Is  
23 an 80-year-old building, in your estimation, new  
24 or relatively new?

25 MR. FALANGA: Object to the form of



1 the question.

2 A. It is not.

3 Q. Okay. Now, let me continue.

4 "When this is not the case, the value indicated by  
5 this approach becomes less reliable." Does that  
6 mean then for a building, that's not new or  
7 relatively new, that the value indicated by the  
8 cost approach becomes less reliable?

9 MR. FALANGA: Object to the form.

10 A. Where is this?

11 Q. Page 53, second paragraph.

12 A. I have to read it to myself --

13 Q. Go ahead, take your time.

14 A. If you don't mind.

15 Q. Sure.

16 I'll do it from scratch. Reading  
17 again from the same paragraph, then, Mr. Walter,  
18 "When a building is not new or relatively new, the  
19 value, indicated by" -- you say that the value  
20 indicated by this approach becomes less reliable,  
21 what do you mean by that?

22 A. I mean there's a depreciation  
23 involved.

24 Q. And the older the building, the  
25 more depreciation; is that correct?

1 MR. FALANGA: Object to the form.

2 Q. Is that correct?

3 A. Not always.

4 Q. Okay. Then what is it about an  
5 old building that makes the cost approach less  
6 reliable?

7 A. Because the cost to build,  
8 rebuild or replace would change.

9 Q. Well, in the next sentence --

10 A. It is more costly to...

11 Q. In the next sentence, you  
12 actually answered my question, don't you? You  
13 say, "The primary weakness of the cost approach is  
14 in the accurate reflection of the total accrued  
15 depreciation on the total property value, which by  
16 its nature, is very difficult to measure. The  
17 physical age of the subject improvements decreases  
18 the accuracy of the cost approach to value." You  
19 would agree with that?

20 A. Well, yes.

21 MR. FALANGA: Object to form.

22 Q. And therefore, an 80-year-old  
23 building is -- withdrawn.

24

25 A. I don't see an 80-year old here,

1    though.

2           Q.           Well, you told us that in your  
3   report, didn't you?

4           A.           80-year old --

5           Q.           Excuse me.

6           A.           I'm sorry.

7           Q.           Would you agree that employment  
8   of the cost approach valuation of an 80-year-old  
9   building is unreliable because of the  
10   depreciation, which is so difficult to measure?

11                   MR. FALANGA: Object to the form of  
12   the question.

13           A.           I don't know if I can agree with  
14   that.

15           Q.           Do you agree that the primary  
16   weakness of the cost approach with a building that  
17   is not new or relatively new, is an accurate  
18   reflection of total accrued depreciation, which is  
19   difficult to measure, and that the physical age of  
20   the improvement decreases the accuracy of the cost  
21   approach to value?

22                   MR. FALANGA: Object to the form of  
23   the question.

24           A.           I believe that -- when an  
25   appraiser does this approach, his experience comes

1 into play, and it is known that there is a certain  
2 amount of experience from past appraisals that  
3 were done, to take that and use his expertise to  
4 come up with a reasonable opinion. That's what I  
5 believe.

6 Q. So are you saying then that that  
7 experience permits you, even with an 80-year-old  
8 building, to --

9 A. Yes.

10 Q. -- let me finish the sentence --

11 A. I do believe that.

12 Q. -- to reliably use the cost  
13 approach?

14 MR. FALANGA: Object to the form of  
15 the question.

16 A. I can't answer that question  
17 anyway.

18 Q. The next paragraph says, "There  
19 are additional weaknesses in employing the cost  
20 approach." And I'm skipping down to the next  
21 sentence. "In addition, accurately estimating  
22 accrued depreciation in improvements, which are  
23 not of new or recent construction, is difficult to  
24 measure and speculative in nature amidst changing  
25 market conditions."

1 A. The question again, please.

2 MR. GRUEN: I'll have the question  
3 read back.

4 (Record read.)

5 MR. FALANGA: Objection to the form  
6 of the question.

7 A. I don't know about inconclusive.

8 Q. Did you use the word  
9 "inconclusive" on Page 40 of your report?

10 A. Yes.

11 Q. Okay. So are you saying that  
12 that's accurate or inaccurate, that statement?  
13 Are you saying that your report is inaccurate in  
14 that respect?

15 MR. FALANGA: Objection to the  
16 form.

17 A. No, I'm not saying that. I'm  
18 saying it's a poor --

19 Q. Poor choice of words?

20 A. Yes.

21 Q. Okay. If you knew that the  
22 parties intended, with this property, to tear down  
23 the building and not reconstruct it, would you not  
24 have employed the cost reproduction analysis?

25 A. I don't know.

# **EXHIBIT**

## **#22**

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW JERSEY  
CASE NO. 07-15195(MS)  
CHAPTER 11

In re BAYONNE MEDICAL CENTER, :

Debtor, :

**ORIGINAL**

BAYONNE MEDICAL CENTER, :

Debtor and :

Debtor-in-Possession; and :

ALLEN D. WILEN, in his :

capacity as Liquidating :

Trustee and Estate. :

Representative for the Estate :

of Debtor, Bayonne Medical :

Center, :

DEPOSITION OF:

ROBERT S. BURNEY

VOLUME II

(Pages 36-115)

Plaintiff, :

-vs- :

BAYONNE/OMNI DEVELOPMENT, :

L.L.C., a New Jersey limited :

liability company; et al., :

Defendants. :

-----  
B E F O R E:

SHARON B. STOPPIELLO, a Certified Court  
Reporter and Notary Public of the State of New  
Jersey, at the offices of CONNELL FOLEY, L.L.P.,  
85 Livingston Avenue, Roseland, New Jersey, on  
WEDNESDAY, DECEMBER 15, 2010, commencing at 10:02  
a.m., pursuant to Notice.

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1 It was higher than the 2,000,000. I don't recall  
2 the exact amount. I think it was somewhere in the  
3 vicinity of \$5,000,000.

4 Q. And as you were contemplating the due  
5 diligence that would be required by the financing  
6 agency, were you aware that there had been an  
7 earlier appraisal that showed a higher value?

8 A. I was aware of that, yes.

9 Q. Did you consider communicating that  
10 to the financing authority, the Facilities Authority  
11 I should say?

12 A. We never got to that stage. The  
13 transaction was canceled before we ever got into the  
14 details of due diligence.

15 Q. I see. Now, the report of Cushman &  
16 Wakefield dated November 22, 2006, RB-2, contains a  
17 marking on Page 11 indicating that it's a draft.  
18 Can you explain why it was marked "Draft"?

19 A. I don't know why Cushman & Wakefield  
20 marked it "Draft." I assume it's because it was not  
21 considered to be the final document.

22 Q. Were there any communications that  
23 you were aware of to secure a final document?

24 A. I don't believe so, because what  
25 happened was by the time this document, this draft



1 document was issued, the reason for its necessity  
2 was over. In other words, prior to November 22nd,  
3 the bond transaction was put off.

4 Q. I see. So there was no need to have  
5 Cushman & Wakefield finalize its report?

6 A. That's correct.

7 Q. Would that have entailed an  
8 additional expense to Cushman & Wakefield?

9 A. I don't know.

10 Q. When you received this report, did  
11 you have an understanding as to whether the  
12 indication of a \$2,000,000 value, which appears on  
13 Page 10, was anything other than a good-faith  
14 professional analysis of the value of that property?

15 MR. PIZZI: Object to form.

16 MR. CAMBRIA: I object to form of the  
17 question. It hasn't been established yet, as far as  
18 I can recall, as to when he would have received  
19 this. I know it's dated November 22nd. I'm not  
20 sure that it's been established that Mr. Burney  
21 received it on or about that date. You might want  
22 to check that first.

23 MR. COPLON: Mr. Cambria's point is  
24 well taken. Withdraw the question.

25 Q. When did you receive this document?

1           A.       I don't recall the precise date. I  
2 believe what happened was it was e-mailed to D.B.  
3 Ross and D.B. may have forwarded the e-mail to me.  
4 It was sometime in at least November 22nd. It may  
5 have been a couple of days afterward. I don't  
6 recall the exact day.

7           Q.       But you got this document relatively  
8 contemporaneously with the date that appears on it?

9           A.       Relatively, and, again, I can't tell  
10 you what that means. Within several days probably.

11          Q.       Well, can we establish this? Did you  
12 have knowledge of and possession of this document or  
13 awareness of this document prior to December, the  
14 first week in December, when the Omni/Bayonne  
15 transfer occurred?

16          A.       Yes.

17          Q.       You knew about it?

18          A.       Yes.

19          Q.       And you knew at the time that the  
20 report contained an opinion, or at least a draft  
21 opinion of \$2,000,000, you were aware of that?

22          A.       Yes.

23          Q.       And you were about to go in on behalf  
24 of a client and do a closing where the purchase  
25 price was \$2,000,000?

1 A. Yes.

2 Q. Did you communicate this report to  
3 anyone at the hospital?

4 A. I personally did not. I believe D.B.  
5 Ross probably did.

6 Q. To whom?

7 A. I don't know for certain. I would  
8 suspect it was to Marv Apsel.

9 Q. Mr. Brockman?

10 A. I don't know. I doubt it.

11 MR. PIZZI: I just want to note that  
12 I object to everything after "I personally did not"  
13 in that answer.

14 Q. Can you describe your understanding  
15 of the circumstances under which Robert Evans and  
16 Carrie Evans had left the hospital?

17 A. I have no specific knowledge as to  
18 the details under which they left. They didn't  
19 leave at the same time. Rob Evans left several  
20 weeks earlier. I know he left rather suddenly. I  
21 don't know the details.

22 Q. Was it your understanding when this  
23 Cushman & Wakefield report was ordered that it was  
24 important for the hospital to carefully review any  
25 decisions that they had made?

1 MR. CAMBRIA: Object to the form of  
2 the question.

3 MR. PIZZI: Object to the form.  
4 Could you read it back?

5 (The pending question is read by the  
6 Reporter.)

7 A. I wouldn't put it that broadly. We  
8 anticipated that we were going to be asked the  
9 question whether the purchase price was determined  
10 objectively. Since Rob Evans was gone, we didn't  
11 have the benefit of his knowledge.

12 Q. So when Cushman & Wakefield was asked  
13 to review this, this was a case of Lindabury making  
14 sure that Evans had not entered into a transaction  
15 at less than fair value?

16 MR. PIZZI: Objection.

17 MR. CAMBRIA: Objection to the form  
18 of the question.

19 A. The purpose was to provide evidence  
20 that the purchase price was a reasonable one.

21 Q. And when you received the Cushman &  
22 Wakefield report of November 22, this was, I guess,  
23 approximately two weeks before a closing was  
24 contemplated, where the title to the property would  
25 exchange hands at a \$2,000,000 price, correct?

1 A. That's correct.

2 Q. Now, the report of Cushman &  
3 Wakefield is marked "Draft." Did you have any  
4 understanding as to whether the \$2,000,000 price was  
5 subject to further changes?

6 MR. PIZZI: Objection, no foundation.

7 A. No. This report was not ordered in  
8 the context of the sale to Omni. This report was  
9 obtained in the context of being able to provide  
10 documentation if requested in connection with the  
11 bond issue.

12 Q. I guess let me just backtrack. So  
13 the report had a different purpose than the Omni  
14 transaction? It wasn't related to Omni, per se?

15 A. That's correct.

16 Q. But I guess my question is: Did you  
17 have an understanding that the closing that you were  
18 about to attend was at a transaction price where a  
19 professional organization, such as Cushman &  
20 Wakefield, had at least preliminarily in draft form  
21 told you it's a square price, it's a fair price?

22 MR. PIZZI: Object to the form.

23 A. We were aware of what the report said  
24 prior to the closing.

25 Q. And were you aware that this

1 \$2,000,000 figure was sufficiently developed,  
2 professionally developed and, if need be, you could  
3 have asked Cushman & Wakefield to sign the report?  
4 It wasn't just a number that appeared there  
5 randomly?

6 MR. PIZZI: Objection.

7 MR. CAMBRIA: Object to form of the  
8 question. I don't think this witness has said  
9 anything at all about the propriety or the validity  
10 of the opinions that are expressed in this report  
11 and I don't think he would be qualified to do so.

12 A. The report says what it says. I'm  
13 not a real estate appraiser.

14 Q. Right. But I mean do you have any  
15 reason to believe or a basis to believe that this  
16 number was artificial, fictional, not reliable?

17 A. No, I have no reason, no basis --

18 MR. PIZZI: Object to the form.

19 A. -- to believe that.

20 Q. Just for argument's sake, so it's  
21 clear, you were the closing attorney. Did you also  
22 negotiate the language of the contract with Gruen?

23 A. Yes.

24 Q. So you were familiar with the  
25 provisions of the contract itself?